

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X		
KOBRA INTERNATIONAL, LTD. d/b/a	:	<u>ECF CASE</u>
NICOLE MILLER, LTD., a New York	:	
Corporation,	:	CIVIL ACTION NO. 07-CV-9894 (VM)
	:	
Plaintiff,	:	
	:	[PROPOSED] FIRST AMENDED
- against -	:	COMPLAINT FOR COPYRIGHT
	:	INFRINGEMENT, UNFAIR
BOSTON PROPER, INC., a Florida	:	COMPETITION AND FALSE
Corporation; RICHIE TAILOR, INC., a New	:	DESIGNATION OF ORIGIN AND
York Corporation; JOHN DOES 1-15; and	:	UNLAWFUL AND DECEPTIVE ACTS
XYZ CORPORATIONS 2-15,	:	AND PRACTICES
	:	(JURY TRIAL DEMANDED)
	:	
	:	
Defendants.	:	
	:	
----- X		

Plaintiff Kobra International, Ltd. d/b/a Nicole Miller, Ltd. hereby files this First Amended Complaint on personal knowledge as to its own activities and on information and belief as to the activities of others:

THE PARTIES

1. Plaintiff Kobra International, Ltd. d/b/a Nicole Miller, Ltd. is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 525 Seventh Avenue, New York, New York 10018. Kobra International, Ltd. d/b/a Nicole Miller, Ltd. is referred to as "Nicole Miller" or "Plaintiff."

2. Upon information and belief, Defendant Boston Proper Inc. ("Boston Proper") is a corporation organized and existing under the laws of the State of Florida and having its

principal place of business at 6500 Park Of Commerce Boulevard, Boca Raton, Florida 33487. Boston Proper is a multi-channel retailer of woman's apparel that transacts business and contracts to supply goods within the State of New York and throughout the United States through its website at <www.bostonproper.com> and through its catalogs.

3. Upon information and belief, XYZ Corporation 1 has been identified as Richie Tailor, Inc. ("Richie Tailor"), a corporation organized and existing under the laws of the State of New York, having its principal place of business at 450 Seventh Avenue, Suite 306, New York, New York 10123.

4. Defendants John Does 1-15 and XYZ Corporations 2-15, whose identities and addresses are presently unknown to Nicole Miller, are individuals and corporate entities that, upon information and belief, have made, imported, offered to sell and/or sold to the Defendants the infringing items complained of herein. The First Amended Complaint herein will be amended, if appropriate, to include the name or names of these individuals when such information becomes available. Boston Proper, Richie Tailor and John Does 1-15 and XYZ Corporations 2-15 may be referred to separately or collectively as "Defendants."

JURISDICTION AND VENUE

5. This is an action for: (a) copyright infringement in violation of the Copyright Law, 17 U.S.C. §§501, *et. seq.*; (b) unfair competition and false designation of origin in violation of 15 U.S.C. §1125(a); (c) unlawful and deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349; and (d) unfair competition under New York state law, all of which activities have occurred in this District and elsewhere in interstate commerce.

6. Subject matter jurisdiction for the claim of copyright infringement and unfair competition and false designation of origin is proper in this Court pursuant to 28 U.S.C. §§1331, 1332, 1338(a), 17 U.S.C. §501 and 15 U.S.C. §1125(a). Supplemental jurisdiction for the

claims of unlawful deceptive acts and practices and unfair competition is proper in this Court pursuant to 28 U.S.C. §1367 because these claims form part of the same case or controversy as the claim for copyright infringement.

7. This Court has personal jurisdiction over the Defendants in that Defendants transact business and contract to supply goods in the State of New York including in this District.

8. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(a) in that the Defendants are subject to personal jurisdiction in this Judicial District.

FACTUAL BACKGROUND

A. NICOLE MILLER PRODUCTS AND SALE OF ITS COPYRIGHTED DESIGN

9. Nicole Miller is one of the leading designers of clothing and fashion accessories in the World. Nicole Miller's designs have been prominently featured in numerous magazines, television shows, and other forms of media. Nicole Miller's designs are also frequently worn by celebrities at prestigious events. Accordingly, Nicole Miller has become a preeminent symbol of luxury apparel and fashion goods of the highest quality ("Nicole Miller Products").

10. Nicole Miller is the exclusive owner of the copyright in a fabric design known as "Africa Design," which is the subject of U.S. Copyright Registration No. VA-1-378-665 registered on November 2, 2006 (the "Africa Design" or the "Nicole Miller Copyright"). A true and accurate copy of the Certificate of Registration and related deposit for the Africa Design is attached hereto as Exhibit A. In March 2006, Nicole Miller introduced the Africa Design on dress style # BM0155, and has sold more than 1,000 dresses with the Africa Design.

11. The registration of the Africa Design creates a legal presumption in favor of Nicole Miller with respect to the ownership of and the validity of the copyrights in these works.

12. Nicole Miller Products bearing the Nicole Miller Copyright are sold in high-end department stores, such as Bloomingdale's, Neiman Marcus and Nordstrom, as well as in Nicole Miller boutiques throughout this District and elsewhere in the United States. A copy of the Nicole Miller store locator for New York is attached hereto as Exhibit B. Nicole Miller has spent millions of dollars and has expended significant effort in advertising, promoting and developing the Nicole Miller Products throughout the world. Nicole Miller has advertised the Africa Design in the April 2006 issues of *Elle* and *In Style* magazines. Copies of these advertisements are attached hereto as Exhibit C. As a result of such advertising and expenditures, Nicole Miller has established considerable goodwill in the Nicole Miller Products, namely the Africa Design.

B. BOSTON PROPER DEFENDANT'S UNLAWFUL ACTS

13. On or about March 2007, Nicole Miller learned that Boston Proper was selling apparel, including a dress and a top, bearing a design virtually identical to the Africa Design (the "Infringing Products") through its website <bostonproper.com> as well as through its mail order catalog. True and accurate copies of photographs of the Infringing Products are attached hereto as Exhibit D.

14. On March 22, 2007, Nicole Miller, through its attorneys, Greenberg Traurig LLP, sent a cease and desist letter to Boston Proper. A true and accurate copy of the cease and desist letter is attached hereto as Exhibit E.

15. Upon information and belief, Boston Proper has distributed and/or sold the Infringing Products throughout the United States, including in New York and this District.

16. Upon information and belief, Boston Proper has willfully and/or negligently infringed the Nicole Miller Copyright by distributing, selling and/or offering for sale infringing

products bearing the Africa Design without Nicole Miller's authorization. Nicole Miller has neither licensed nor authorized Boston Proper to reproduce, adapt and/or display Nicole Miller's copyrighted Africa Design or to manufacture, distribute, advertise, sell or offer to sell apparel that are infringing copies of the Nicole Miller Products.

17. Upon information and belief, the conduct of Boston Proper was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in its copyrighted Africa Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized distribution, and sale of products bearing the Nicole Miller Copyright.

C. RICHIE TAILOR DEFENDANT'S UNLAWFUL ACTS

18. Upon information and belief, Richie Taylor is engaged in the unauthorized manufacture, distribution, offer for sale and/or sale of the infringing items complained of herein.

19. Upon information and belief, in early 2007, Defendant Richie Taylor, without authorization or license from Plaintiff, supplied the Infringing Products to Defendant Boston Proper in connection with its unauthorized distribution and/or sale of the Infringing Products throughout the United States, including in New York and this District.

20. Upon information and belief, the conduct of Richie Taylor was and is willfully done with knowledge of, and/or reckless disregard for, Nicole Miller's rights in its copyrighted Africa Design for the purpose of damaging Nicole Miller's business and profiting from the unauthorized distribution, and sale of products bearing the Nicole Miller Copyright.

FIRST CLAIM FOR RELIEF
(Copyright Infringement Under 17 U.S.C. §501)

21. Nicole Miller realleges and incorporates by reference the allegations above.

22. Nicole Miller is the owner of the Nicole Miller Copyright.

23. Nicole Miller has never authorized Defendants to make copies of the Nicole Miller Copyright, or to distribute or display the Africa Design. Defendants' acts of copying, distributing and displaying the Nicole Miller Copyright, which have been willful and deliberate, have been performed without license, authorization or consent from Nicole Miller.

24. As a direct and proximate result of Defendants' acts, Nicole Miller has suffered damages to its valuable Nicole Miller Copyright, and other damages in an amount to be proved at trial.

25. Nicole Miller does not have an adequate remedy at law, and will continue to be damaged by Defendants' copyright infringement unless this Court enjoins Defendants from such fraudulent business practices.

26. Defendants have realized unjust profits, gains and advantages as a proximate result of their infringement.

SECOND CLAIM OF RELIEF

(Unfair Competition and False Designation of Origin Under 15 U.S.C. § 1125(a))

27. Nicole Miller realleges and incorporates by reference the allegations above.

28. The Infringing Products are nearly identical or substantially similar to the copyrighted Africa Design and, as such, Defendants' sale of the Infringing Products is likely to cause confusion to the general purchasing public.

29. By manufacturing and/ or arranging for manufacture of, advertising, distributing, offering for sale and selling the Infringing Products that bear a design identical or substantially similar to the copyrighted Africa Design, Defendants misrepresent and falsely describe to the general public the origin and source of the Infringing Products and create a likelihood of confusion by ultimate purchasers and others seeing the Infringing Products as to both the source and sponsorship of such merchandise.

30. Defendants' unlawful, unauthorized and unlicensed manufacturing, advertising, distributing, offering for sale and/or selling of the Infringing Products creates express and implied misrepresentations that the Infringing Products were created, authorized or approved by Nicole Miller, all to Defendants' profit and Nicole Miller's great damage and injury.

31. Defendants have realized unjust profits, gains and advantages as a proximate result of their unfair competition.

32. Nicole Miller has no adequate remedy at law. If Defendants' activities are not enjoined, Nicole Miller will continue to suffer irreparable harm and injury to its goodwill and reputation.

THIRD CLAIM OF RELIEF

(Unlawful Deceptive Acts and Practices Under New York General Business Law § 349)

33. Nicole Miller realleges and incorporates by reference the allegations above.

34. On information and belief, Defendants, without Nicole Miller's authorization or consent, and having knowledge of Nicole Miller's well-known and prior rights in the Nicole Miller Copyright have manufactured and/ or arranged for manufacture of, advertised, distributed, offered for sale and sold Infringing Products to the consuming public in direct competition with Nicole Miller Products.

35. Defendants' use of copies or simulations of the Nicole Miller Copyright is likely to cause and is causing confusion, mistake and deception among the general purchasing public as to the origin of the Infringing Products, and is likely to deceive the public into believing the Infringing Products being sold by Defendants originate from, are associated with, or are otherwise authorized by Nicole Miller.

36. Defendants' deceptive acts and practices involve public sales activities of a recurring nature.

37. Defendants have realized unjust profits, gains and advantages as a proximate result of their unlawful deceptive acts and practices.

38. Nicole Miller has no adequate remedy at law and, if Defendants' activities are not enjoined, Nicole Miller will continue to suffer irreparable harm and injury to its goodwill and reputation.

FOURTH CLAIM OF RELIEF

(Unfair Competition Under New York State Law)

39. Nicole Miller realleges and incorporates by reference the allegations above.

40. Nicole Miller has built up valuable goodwill in the Nicole Miller Copyright.

41. Defendants' use of the Nicole Miller Copyright is likely to and does permit Defendants to palm off the Infringing Products as those of Nicole Miller, all to the detriment of Nicole Miller and the unjust enrichment of Defendants.

42. Defendants, upon information and belief, with full knowledge of the fame of Nicole Miller and the Nicole Miller Copyright, intended to and did trade on the goodwill associated with the Nicole Miller Copyright and have misled and will continue to mislead the public into assuming a connection between Nicole Miller and Defendants by manufacturing, arranging for manufacture, advertising, selling and/or distributing the Infringing Products.

43. The acts of Defendants mislead and deceive the public as to the source of Defendants' goods, permit and accomplish the palming off of Defendants' goods as those of Nicole Miller and falsely suggest a connection with Nicole Miller, and therefore constitute acts of unfair competition with Nicole Miller in violation of the laws of the State of New York.

44. Defendants have realized unjust profits, gains and advantages as a proximate result of their unfair competition.

45. Defendants' acts have and will continue to cause Nicole Miller irreparable harm unless enjoined by this Court. Nicole Miller has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Nicole Miller prays for the following relief against Defendants:

1. That Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under them be permanently enjoined from directly or indirectly infringing the Nicole Miller Copyright in any manner, including, but not limited to, reproducing, adapting, and/or displaying the Nicole Miller Copyright by manufacturing, distributing, importing, exporting, advertising, selling, and/or offering for sale, or causing others to do so, any product, including without limitation clothing, bearing designs substantially similar to the Nicole Miller Copyright;

2. That Defendants be required to effectuate the recall, removal, and return from commercial distribution and/or public display of:

(a) Any product bearing a design substantially similar to the Nicole Miller Copyright manufactured, distributed, imported, exported, advertised, sold, and/or offered for sale by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(b) Any promotional and/or advertising materials, labels, packaging, or other items bearing a design substantially similar to the Nicole Miller Copyright used or displayed by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it; and

(c) Any mold, pattern, or other item used by Defendants, their officers, agents, servants, employees, representatives, confederates, successors and assigns, and all persons and entities acting for, with, by, through, or under it, to manufacture any product, promotional and/or advertising materials, labels, packaging, or other item bearing a design substantially similar to the Nicole Miller Copyright;

3. That Defendants be required to deliver up for destruction all of the items called for by Paragraph 2 of this Prayer for Relief, above, as well as any remaining products, advertising, packaging, molds, patterns, or other items bearing a design substantially similar to the Nicole Miller Copyright, or used to manufacture any item bearing a design substantially similar to the Nicole Miller Copyright, that are in Defendants' custody or control;

4. That Defendants, within thirty (30) days after service of judgment with notice of entry thereof upon it, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth the details of how Defendants have complied with Paragraphs 1 through 3 of this Prayer for Relief, above;

5. For an award of actual damages sustained by Plaintiff;

6. For an award of Defendants' profits attributable to its copyright infringement;

7. If elected by Plaintiff, for the maximum statutory damages as permitted under the Copyright Act;

8. For such other amounts as may be proper under 17 U.S.C. § 504;

9. For an award of costs and attorneys' fees pursuant to 17 U.S.C. § 505;

10. For prejudgment interest as permitted by law;

11. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all triable issues raised by this First Amended Complaint.

Dated: January 25, 2008
New York, New York

Respectfully submitted,

GREENBERG TRAURIG, LLP

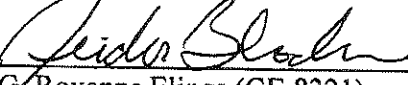
By: 
G. Roxanne Elings (GE 8321)
Deidre D. Blocker (DB 0762)
200 Park Avenue, MetLife Building
New York, NY 10166
(212) 801-9200
Attorneys for Plaintiff
Kobra International, Ltd. d/b/a Nicole Miller, Ltd.

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGI **VA 1-378-665**



EFFECTIVE DATE OF REGISTRATION

Nov 2 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work **▼** **Africa** NATURE OF THIS WORK **▼** See Instructions **Design on Fabric**

Previous or Alternative Titles **▼**

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work **▼**

If published in a periodical or serial give: Volume **▼** Number **▼** Issue Date **▼** On Pages **▼**

2

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a NAME OF AUTHOR **▼** **Kobra International, Ltd.** DATES OF BIRTH AND DEATH
Year Born **▼** Year Died **▼**

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile
Name of Country **OR** Citizen of **U.S.A.**
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonym? ☐ Yes ☒ No

Nature of Authorship Check appropriate box(es). See Instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

b Name of Author **▼** Dates of Birth and Death
Year Born **▼** Year Died **▼**

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile
Name of Country **OR** Citizen of **U.S.A.**
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonym? ☐ Yes ☐ No

Nature of Authorship Check appropriate box(es). See Instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3

a Year in Which Creation of This Work Was Completed **2005** **b** Date and Nation of First Publication of This Particular Work
Complete this information ONLY if this work has been published. Month **02** Day **27** Year **2005**
Nation **U.S.A.**

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. **▼**
Kobra International, Ltd.
525 Seventh Avenue
New York, NY 10018

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. **▼**

APPLICATION RECEIVED
Nov 2 2006
ONE DEPOSIT RECEIVED
Nov 2 2006
TWO DEPOSITS RECEIVED
Nov 2 2006
FUNDS RECEIVED

MORE ON BACK ► • Complete all applicable spaces (numbers 4-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 5.

DO NOT WRITE HERE
Page 1 of 2 pages

PREVIOUS REGISTRATION Has registered for this work, or for an earlier edition of this work, already published in the Copyright Office.

Q Yes. Q Yes, that's all. Q Yes, why is another real Gaudin being sought?

- a. ☐ This is the first published edition of a work previously registered in unpublished form.
- b. ☐ This is the first application submitted by this author as copyright claimant.
- c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number " " Your Registration " "

DERIVATIVE WORK OR COMPILATION Consists with respect to and in the derivative work, consists only of or a compilation of a preexisting material, namely any preexisting work of works that the work is based on or incorporates.

b. Material Added to This Work: Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

DEPOSIT ACCOUNT: If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name of Account: _____

Account Number: _____

CORRESPONDENCE: Give name and address to which correspondence about this application should be sent. Hand Address Any City State Zip V.

Estelle Rose, Cobra International, Ltd.
525 Seventh Avenue, 20th Floor
New York NY 10018

Area code and city area telephone number (212) 719-9200

— 87 —

7. File number: 1212 1869-1938

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one box

- ☒ Author
- ☐ Other copyright claimant
- ☐ Owner of exclusive rights
- ☒ Authorized agent of **Kobal**

of the work identified in this application and that the statements made by me in this application are, correct to the best of my knowledge.

Typed or printed name and date: If this application gives a date of publication in space 3, do not sign and submit it before that date.

G. Rotanna Blings

19/30/2006

Handwritten: Handwritten: [illegible]

Certificate
will be
mailed in
window
envelope
to this
address:

Name: Basilio Rosa, Cobra International, Ltd.
 Number: 525 Street: 57 Apt: Y
525 Seventh Avenue, 20th Floor
 City: Manila V:
New York, NY 10018

CLERKING
1. Educational background: Special
Education, 10th grade
2. Employment history: 10th grade
3. Skills: 10th grade
4. Address: 10th grade
5. Phone: 10th grade
6. Email: 10th grade
7. Social Security: 10th grade
8. Other: 10th grade

17 USC (505A): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408, or in any written statement filed in connection with that application, shall be fined not more than \$5,000.

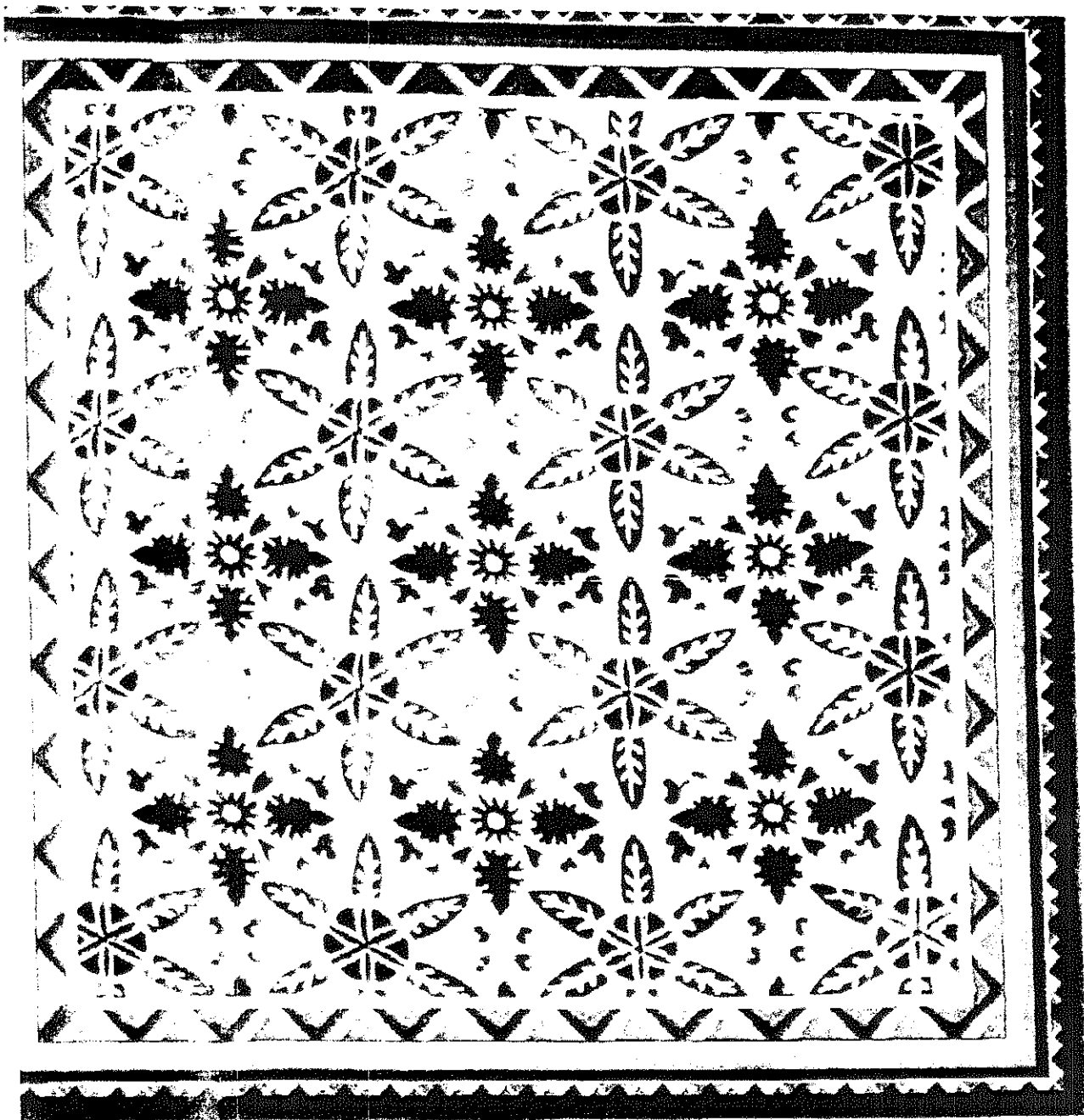
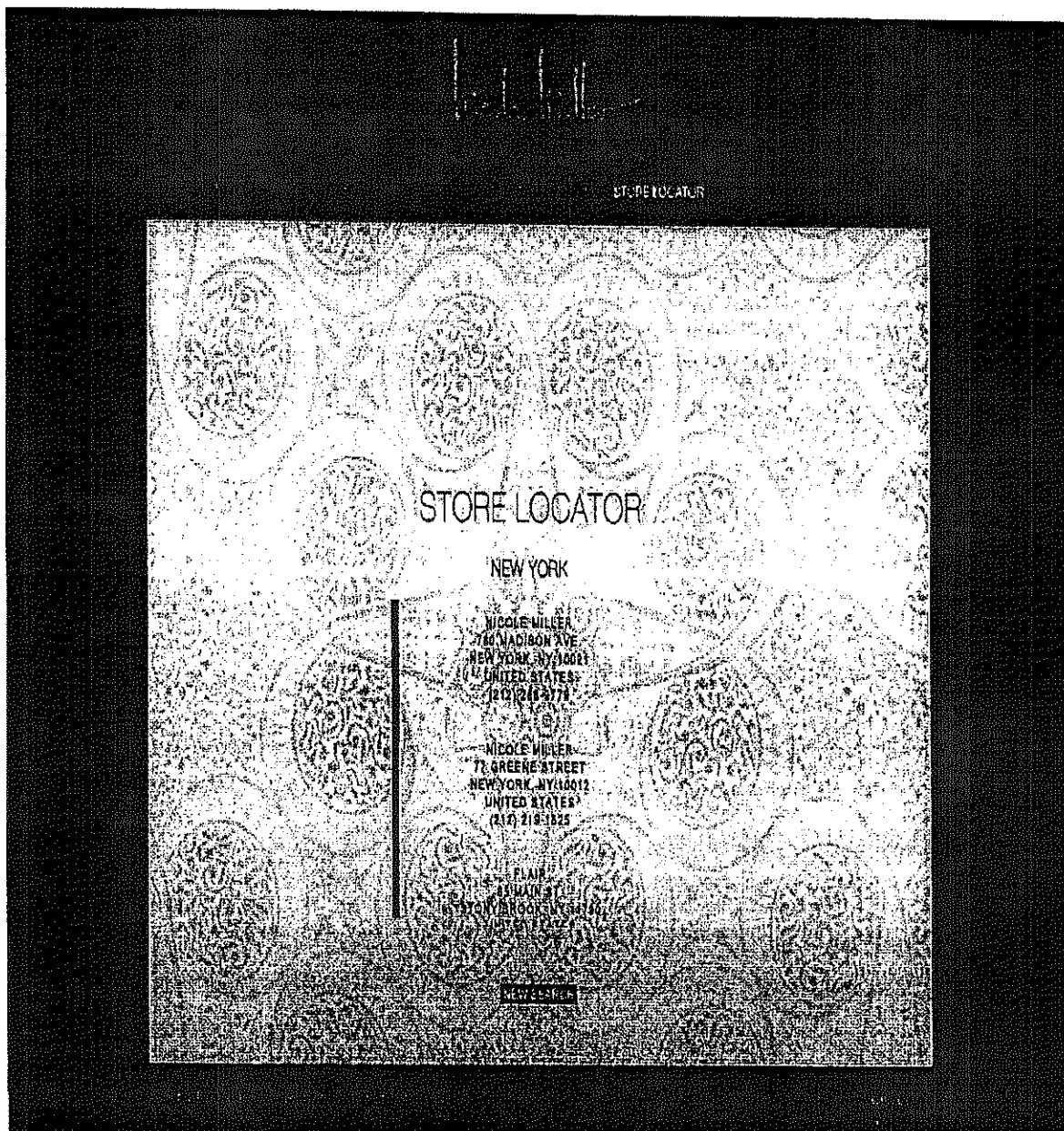


EXHIBIT B

NICOLE MILLER

Page 1 of 1



NICOLE MILLER

Page 1 of 1

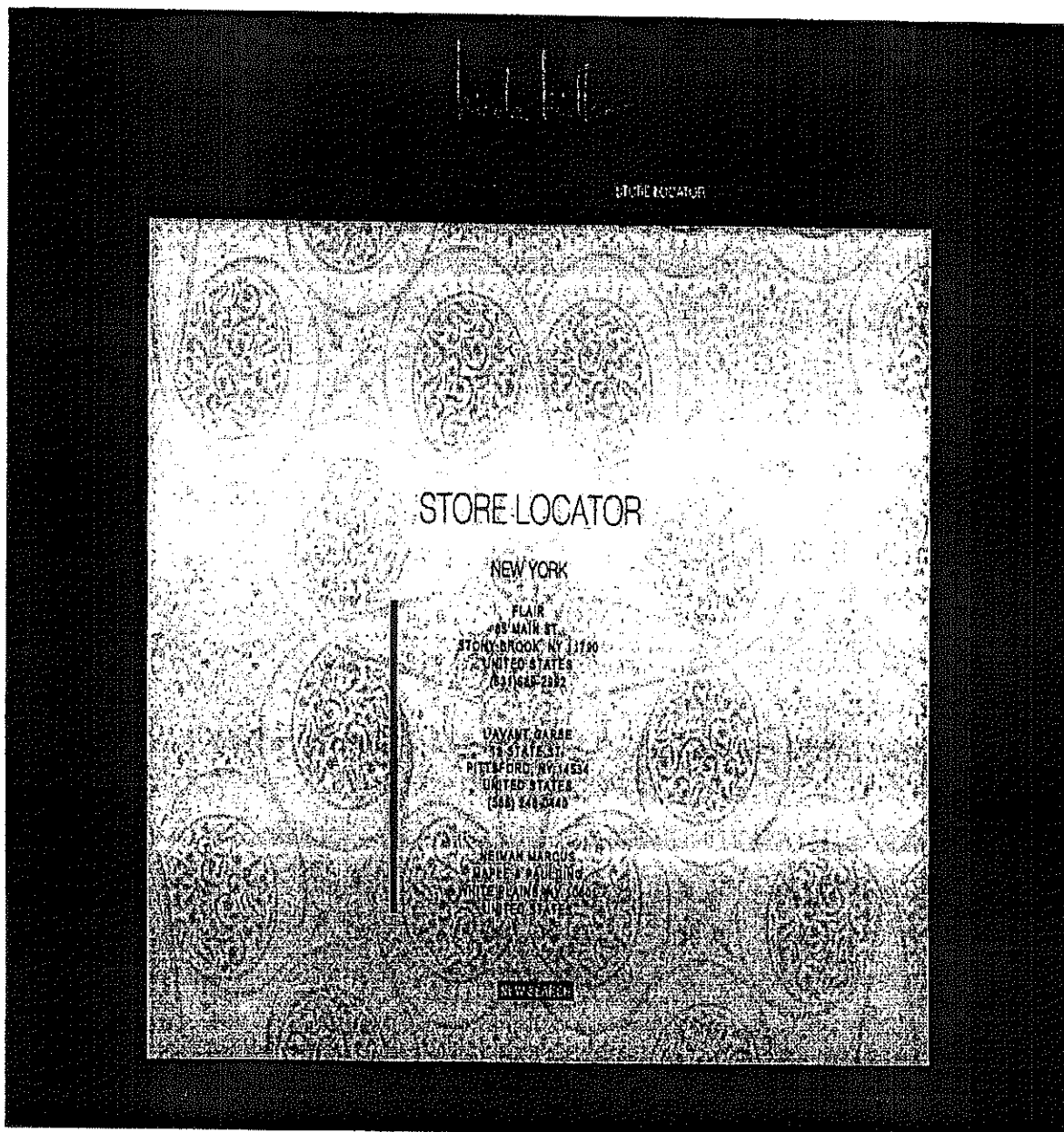


EXHIBIT C

**fashion's Hottest
DEALS & STEALS**

nSt

**33
Best
Beauty
Buys**

**What to
Wear Now!**

**Easy,
Pretty Hair
Flattering
Work Outfits**

**Rebecca
Romijn**

InStyle

APRIL 2008 INSTYLE.COM #OURKEYWORD:INSTYLE

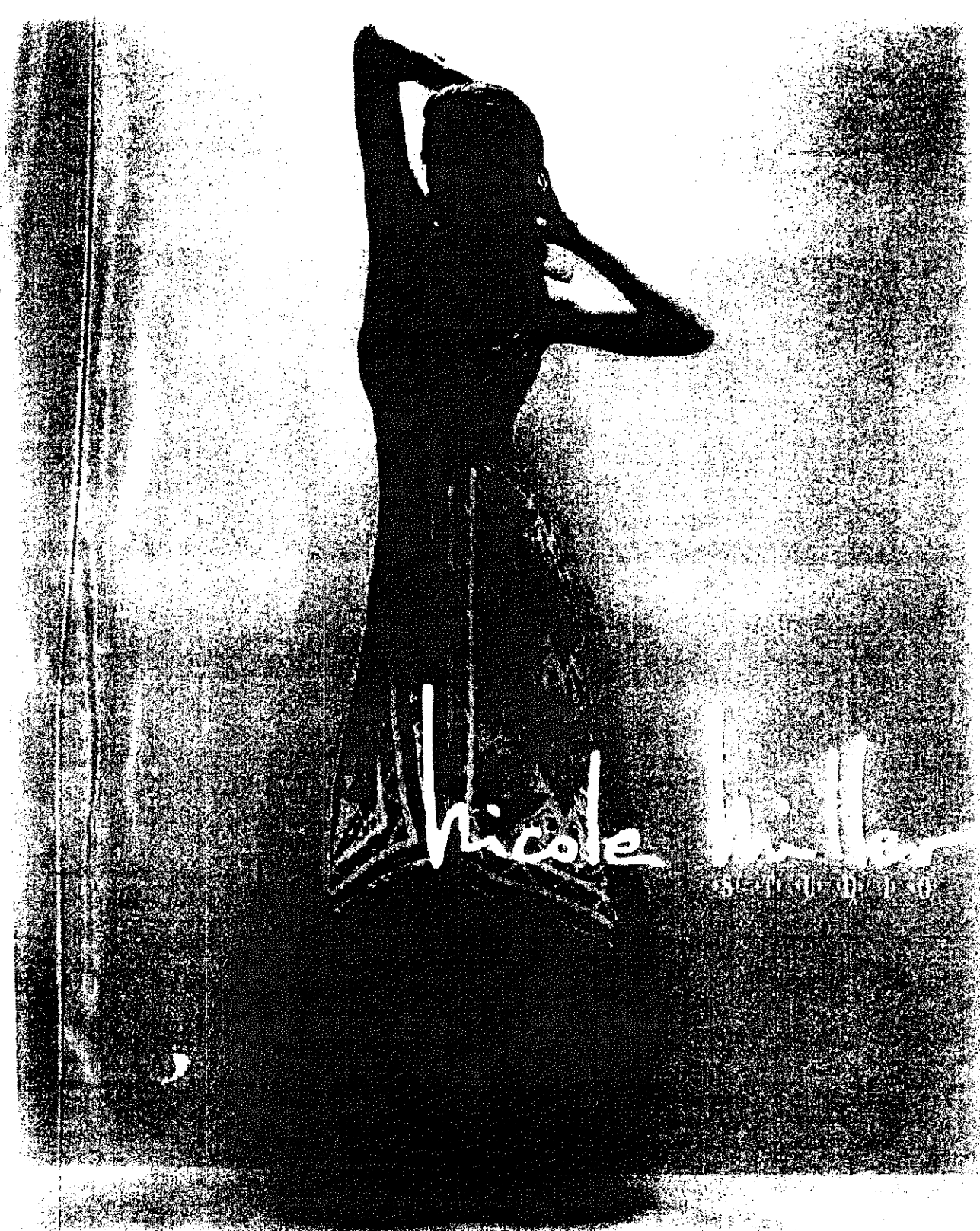



EXHIBIT D

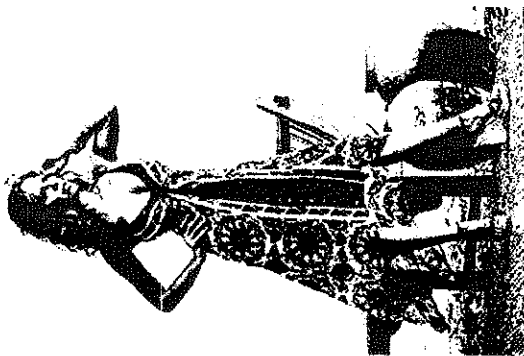


BOSTON PROPER

browse catalog catalog quick order
categories collections sale daily specials catalog request my account customer service

keyword or product id 

new arrivals dresses




see larger view see detail
see another view see colors

Border-print primal dress. \$149.00
This dress has a plunging wide V-neckline with gathered knotted bodice; uneven hem. Back zip. Silk. Imported. Dry clean. 56" length at longest point. Sizes 2-14. Multi.
FIT NOTE: Sexy close-fitting bodice with an A-line skirt.
826049D7


see size information

select size select color qty


[add to shopping bag](#)
[add to wish list](#)
[tell a friend](#)




Mixed bangle bracelet set. \$49.00



NuBra® Ultra-light. \$32.00



X-front patent wedge sandals. \$89.00



Wood linket earrings. \$39.00

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BOSTON PROPER

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 keyword or product id

[advanced search](#)
[shopping bag](#)
[new](#)

African-print top, \$129.00

Top with elastic ruching at bust; heavily-beaded notch neckline. Three-quarter flare sleeves. Silk. Imported. Dry clean. Sizes XS(2-4), S(6-8), M(10-12), L(14-16). Multi.

FIT NOTE: Relaxed; easy fit with slight shaping. Follow the given size equivalents for the best fit. If in between sizes, take the next smaller size.

826028D7

[see size information](#)
 select size

 select color

 qty

[add to shopping bag](#)
[add to wish list](#)
[tell a friend](#)

[see larger view](#)
[see detail](#)
[see another view](#)
[see colors](#)


Basic leggings.
\$39.00



Wood trunk earrings. \$39.00



X-front patent wedge sandals. \$89.00



Your favorite fitted boot-cut jeans. \$59.00

 enter email address

[gift certificate](#)
[order status](#)
[contact us](#)
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[privacy & security](#)
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EXHIBIT E

Greenberg Traurig

G. Roxanne Elings
212-801-2148
elingsr@gtlaw.com

March 22, 2007

**VIA OVERNIGHT MAIL
AND FACSIMILE (561) 241-1055**

Boston Proper
6500 Park of Commerce Boulevard
Boca Raton, Florida 33487

Re: **Infringement of Nicole Miller Copyrights**
Our reference: 66524.020000

Dear Sir or Madam:

We are intellectual property counsel for Kobra International, Ltd. d/b/a Nicole Miller ("Nicole Miller"), a world famous fashion house, which styles, manufactures and sells diverse articles of men's, women's and children's apparel, luggage, purses, and other accessories. In addition to owning exclusive rights in the trademark NICOLE MILLER and other marks, Nicole Miller owns all rights, title and interest in its original fabric designs, many of which are registered with the United States Copyright Office.

One such fabric design exclusively owned by Nicole Miller is known as the "Africa Design" ("Africa Design"). The Africa Design consists of a green and yellow background print, with a flower design composed of a flower within a circle, and then six petals emanating from the center circle. The design also has a floral pattern consisting of a circle with four petals stemming from the core. In addition, the border of the Africa Design is a distinctive multicolor geometric pattern. Nicole Miller first began selling the Africa Design in July 2005, and has registered the Africa Design with the Copyright Office. The copyright registration for the Africa Design is annexed hereto as Exhibit A.

Nicole Miller has expended substantial time, effort and money in developing and promoting its products, and has built a national – and worldwide – reputation and notoriety based on its high-quality original creations, including the Africa Design.

We have learned that Boston Proper is selling apparel, including a dress and top, that are virtually identical to Nicole Miller's Africa Design (the "Infringing Goods") through the website <bostonproper.com>. Pictures of the Infringing Goods are attached as Exhibit B for your reference. Please be advised the sale of apparel that are so similar to Nicole Miller's Africa Design violates Nicole Miller's rights under United States Copyright laws. Any intentional and willful infringement may entitle Nicole Miller to recover statutory damages of up to \$150,000 or, in the alternative, to recover your profits from sales of these garments, in addition to Nicole Miller's costs and attorney's fees.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
BRUSSELS*
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN*
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PHILADELPHIA
PHOENIX
ROME*
SACRAMENTO
SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO*
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
ZURICH

*Strategic Alliance
Tokyo-Office/Strategic Alliance

Boston Proper
March 22, 2007
Page 2

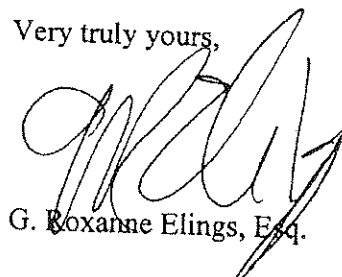
Please be advised that Nicole Miller has already initiated a lawsuit in the Southern District of New York against a manufacturer and two retailers for copyright infringement of its Africa Design. Accordingly, to fully resolve this matter, we demand that you immediately provide us with the following information:

1. Provide an accounting of any inventory of Infringing Goods;
2. Provide the total number of units of Infringing Goods distributed and/or sold to date and the total dollar amount received from such sales;
3. Provide a written statement that you have ceased any and all sale of the Infringing Goods, and will not otherwise infringe any of Nicole Miller's copyrighted designs in the future.

Because of the urgency of this matter, we request a response to our demands no later than close of business on March 30, 2007. Should you fail to comply with these demands within the time period, we are instructed to take all legal steps necessary to halt the sales of these infringing goods.

The above does not constitute an offer of settlement and is sent without prejudice to any rights or claims of Nicole Miller, all of which expressly are reserved.

Very truly yours,



G. Roxanne Elings, Esq.

cc: Nicole Miller

Enclosures

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

REGI VA 1-378-665



EFFECTIVE DATE OF REGISTRATION

Nw 2 2000
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work

Africa

NATURE OF THIS WORK See Instructions

Design on Fabric

Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give: Volume Number Issue Date On Pages

2

NAME OF AUTHOR

a Kobra International, Ltd.

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR Citizen of U.S.A.
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonym? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See Instructions

- ☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☒ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

Name of Author

Dates of Birth and Death
Year Born Year Died

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country

OR Citizen of
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonym? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See Instructions

- ☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

3

a Year in Which Creation of This Work Was Completed

2005

This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published. Month 07 Day 27 Year 2005

Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

Kobra International, Ltd.
525 Seventh Avenue
New York, NY 10018

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK

• Complete all applicable spaces (numbers 5-8) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 5.

DO NOT WRITE HERE

Page 1 of 2 pages

EXAMINED BY	MCJ	FORM VA
CHECKED BY	URS	
<input type="checkbox"/> CORRESPONDENCE		FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☐ No. If your answer is "Yes," why is another registration being sought? (Check appropriate box.)a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number

Year of Registration

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name

Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip

Estelle Rose, Kobra International, Ltd.
525 Seventh Avenue, 20th Floor
New York NY 10018

Area code and daytime telephone number (212) 719-9200

Email

Fax number (212) 869-1938

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of

Kobra International, Ltd.

Name of author or other copyright claimant, or owner of exclusive right(s)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

G. Roxanne Blings

Date 10/30/2006

Handwritten signature (X)

X

Certificate will be mailed in window envelope to this address:

Name
Estelle Rose, Kobra International, Ltd.
Number/Street/Apt
525 Seventh Avenue, 20th Floor
City/State/ZIP
New York, NY 10018

INSTRUCTIONS

1. Complete all necessary spaces.

2. Sign your application in space 8.

3. Send to the Copyright Office.

4. Application form.

5. Nonrefundable filing fee in check or money order payable to Registrar of Copyrights.

6. Deposit material.

MAIL TO

Library of Congress
Copyright Office
101 Independence Avenue SE
Washington, DC 20540-6000

*17 USC §508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

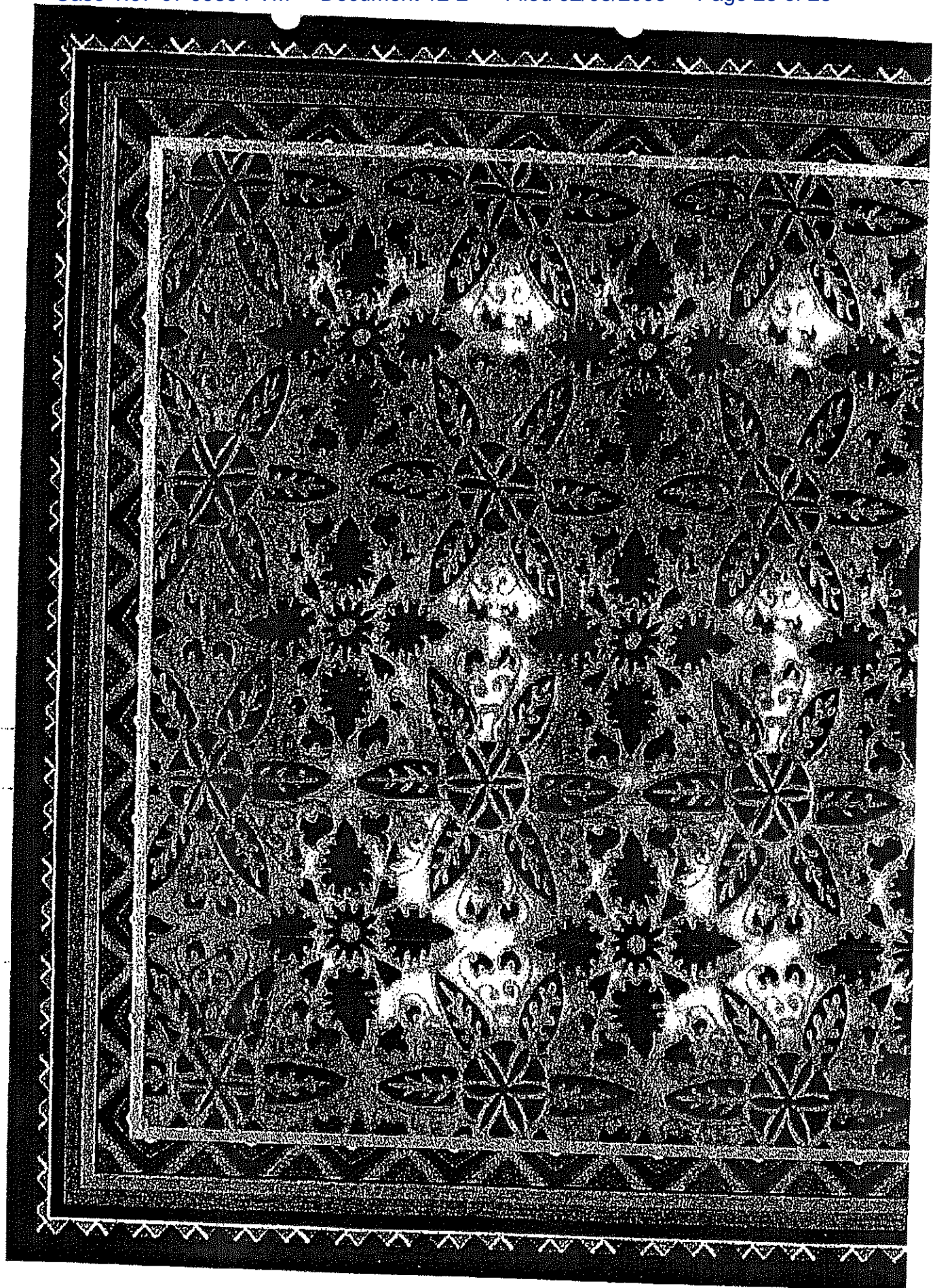


Exhibit B

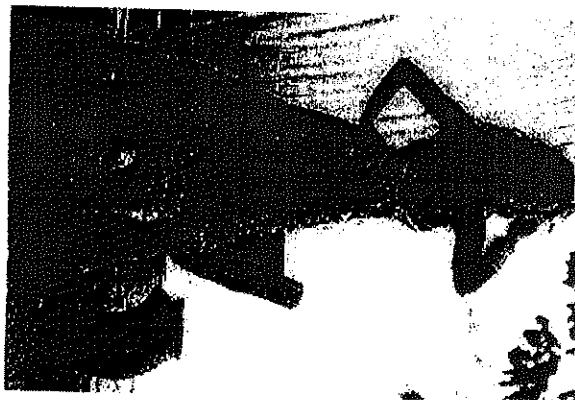
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[shopping bag](#)



[see larger view](#)
[see detail](#)
[see another view](#)
[see colors](#)

Border-print primal dress. \$149.00
 This dress has a plunging wide V-neckline with gathered knotted bodice; uneven hem. Back zip. Silk. Imported. Dry clean. 56" length at longest point. Sizes 2-14. Multi.
FIT NOTE: Sexy close-fitting bodice with an A-line skirt.
 826049D7

[see size information](#)

[select size](#)

[select color](#)

[add to shopping bag](#)

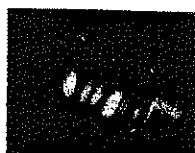
qty

[previous](#) | [next](#)

[suggested coordinates](#)



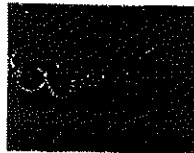
NuBra® Ultra-light.
 \$32.00



Mixed bangle
 bracelet set.
 \$49.00



X-front patent
 wedge sandals.
 \$89.00



Wood tinker
 earrings. \$39.00

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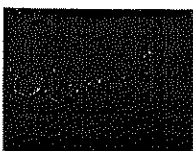
African-print top, \$129.00

Top with elastic ruching at bust; heavily-beaded notch neckline. Three-quarter flare sleeves. Silk. Imported. Dry clean. Sizes XS(2-4), S(6-8), M(10-12), L(14-16). Multi.

FIT NOTE: Relaxed; easy fit with slight shaping. Follow the given size equivalents for the best fit. If in between sizes, take the next smaller size.



Basic leggings.
\$39.00



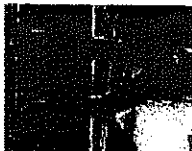
Wood tinsel earrings. \$39.00

[see size information](#)

qty



X-front patent wedge sandals.
\$89.00



Your favorite fitted boot-cut jeans.
\$59.00

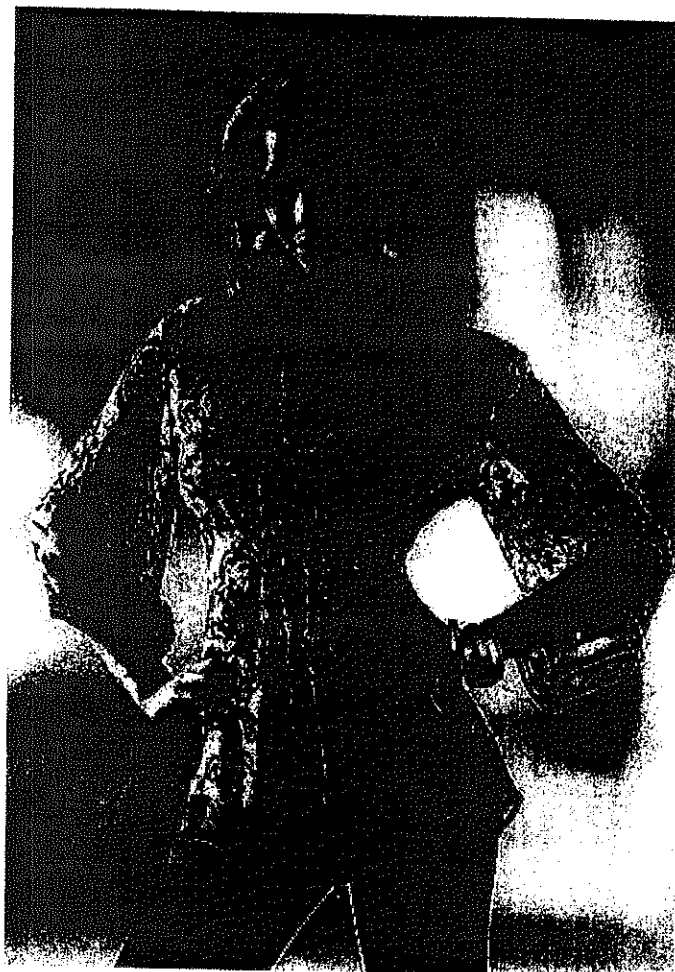


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